

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

AARON LEE JONES,)
)
 Plaintiff,)
)
 v.) No. 2:06-cv-986-MHT-TFM
)
 RICHARD ALLEN, et al.,)
)
 Defendants.)

DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME

Defendants seek an enlargement of 14 days in which to file a response to plaintiff's motion for a stay of execution that was filed on March 14, 2007. The defendants' response is presently due on March 21, 2007, thus, if defendants' motion is granted, such response will be due on April 4, 2007. If the Court is concerned that granting the defendants' enlargement will cause time pressures on the appellate courts, then the defendants respectfully propose the following as an alternative. The defendants will file on March 21, 2007, a response that is dispositive to the stay request, but also allow a 14-day enlargement to file evidentiary materials and a supplemental response based upon such additional materials.

The defendants submit the following as good cause for this motion to be granted:

1. The plaintiff filed a motion for a stay on March 14, which included two declarations that had a total of 35 exhibits attached. Some of these exhibits are voluminous and their total number of pages is well into the hundreds. Although undersigned is familiar with some of the exhibits because they are already a part of this case, many of the exhibits are not recognizable and will have to be read before undersigned can formulate a response.

2. In addition, undersigned has other case deadlines and responsibilities that will impact the defendants' ability to meet the present deadline. For example, undersigned filed a brief in the United States Supreme Court, see Arthur v. Allen, 06-954, on March 14. Undersigned has yet another brief due in the United States Supreme Court on April 9, 2007. See Hallford v. Allen, 06-9895. In addition, undersigned has responsibilities as Chief of the Capital Litigation Division that requires daily attention. Among those are possible appearances in the Alabama Legislature on bills that have an effect on the prosecution of capital murder cases.

3. The defendants submit that this Court and all of the courts reviewing this case should in the interest of fairness have a response by the defendants that fully addresses the pertinent issues. Among the filings made by Jones is a declaration by Dr. Mark Heath, an anesthesiologist employed at Columbia University. With respect, Dr. Heath is a partisan expert as indicated by his recent testimony that he had participated in "30 cases" on behalf of death row inmates by testifying or preparing affidavits alleging aspects of lethal injection are cruel and inhumane. Taylor v. Crawford, 05-4173-CV-S-FJG, Doc. 16 at p. 10. Dr. Heath's declaration in this case even contains a quote from one of the few rulings that relied on his testimony; see Heath Declaration at p. 25, thus indicating that his interest is more than of an expert witness offering objective testimony. The point of all this is that defendants need 14 days to file a responsive expert-witness declaration in response to the allegations made by Dr. Heath. The expert witness that has been retained by defendants needs the additional requested time to prepare a responsive affidavit. The expert witness retained by defendants has represented to undersigned that

he needs until at least the end of the month before he can prepare a declaration. In the interests of fairness, this Court should allow the defendants an opportunity to file an evidentiary response to Dr. Heath's declaration. Without such response, this Court and the appellate courts will only have the benefit of a declaration prepared by the plaintiff's partisan expert witness.

4. Defendants realize the time pressure imposed upon this Court and appreciate the efficiency displayed by the Court in deciding the issues. Defendants do not want to be seen in any way as causing delay. That being said, if the Court allows a 14-day enlargement of time, the case will be submitted to this Court for decision on April 5, a month before the scheduled execution date. In addition, all papers are being lodged with the Eleventh Circuit and the United States Supreme Court. Hence, those courts will be familiar with the issues and presumably ready to rule with haste. As this Court well knows, cases such as this are routinely handled in the time span of days, rather than weeks.

5. However, if this Court remains concerned about granting this motion for enlargement, defendants

respectfully suggest the following alternative. The defendants will file on March 21 a response to the plaintiff's stay request that defendants have a good faith belief is dispositive of the issues. This response will be accompanied by the exhibits that can be procured in that short time frame. Defendants would also be allowed 14 additional days to procure the declaration from their expert witness along with several other evidentiary exhibits that could not be obtained in the short 7-day time window that it now faces. Along with these evidentiary exhibits, defendants will file a supplemental response associated with the evidentiary filings submitted on April 5.

Wherefore, for the foregoing reasons, the defendants respectfully request this Court grant this motion.

Respectfully submitted,

TROY KING
ALABAMA ATTORNEY GENERAL

/s/ J. Clayton Crenshaw
J. CLAYTON CRENSHAW
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

This is to certify that on the 19th day of March, 2007, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following:

Stephanie L. Cohen, Vincent R. Fitzpatrick, Jr., and Heather K. McDevitt.

/s/ J. Clayton Crenshaw
J. CLAYTON CRENSHAW
ASSISTANT ATTORNEY GENERAL

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